

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

LIBERTARIAN PARTY OF
NEW HAMPSHIRE,

and

JO JORGENSON

and

SPIKE COHEN,

and

DARRYL PERRY,

and

JUSTIN O'DONNELL

and

ZACK DUMONT

and

ANDREW OLDING,
Plaintiffs,

v.

GOVERNOR CHRISTOPHER T.
SUNNUNU

In his official capacity as
Governor of the
State of New Hampshire

and

WILLIAM GARDENER,
in his official capacity as
Secretary of State of the
State of New Hampshire,
Defendant

Civil Case No.: 1:20-cv-00688

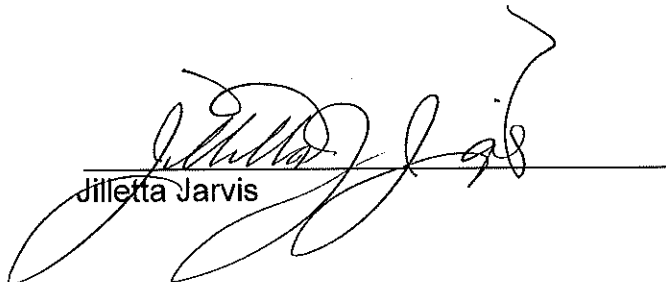
SUPPLEMENTAL AFFIDAVIT OF JILLETJA JARVIS

I, Jillette Jarvis, being duly sworn do state the following of personal knowledge:

1. The New Hampshire Libertarian Party began collecting nomination petitions in January 2020.
2. Our goal is to collect twice the required number of petitions because typically almost one half are determined to be invalid because of name or address information that is different than what was given when the voter registered or other alleged errors.
3. In 2016 we collected between 5,000 and 6,000 petitions of which approximately 2,000 were deemed invalid.
4. We have placed the same level of effort in our securing nomination petitions in this election cycle with much less success.
5. We collected approximately 375 petitions during January and February, primarily at voting locations on the day of the New Hampshire primary.
6. During the pendency of the Governor's Stay at Home Order, we attempted to collect nomination petitions using regular mail and email.
7. Both methods were ineffective. From mailing 350 letters, we only got back 7 nomination petitions. One of our candidates sent out 500 to 1,000 emails and got only 8 responses.
8. We attempted to have the nomination petition requirements modified through requests to the Secretary of State, Attorney General and Governor.


9. We also actively participated in the meetings of the Select Committee on 2020 Emergency Election Support and communicated to the Committee the need to substantially modify the nomination petition requirement.
10. On April 1, 2020, the Party sent a letter to the Secretary of State (attached) noting the necessity of our halting the collection of petitions, and requesting that we be provided ballot access based on our showing in the 2018 election cycle.
11. On April 9, 2020, Darryl Perry, the Party's candidate for Governor, filed a Petition for Redress with the Governor, and on April 22, 2020, with the Office of Attorney General again requesting that the Party be placed on the ballot because of the roadblocks to petition gathering created by the pandemic. See attached.
12. On April 27, 2020, he received a response that the Department of Justice lacked the authority to compel a legal change. See attached.
13. I made numerous phone calls to the Governor's office in April without receiving a response. I sent a request in writing to John Formello, Governor's counsel, on the advice of the Governor's office. This message was sent via email per the advice received and sent on April 30th. I know only that John Formello read the written request on May 10th per a read receipt. See attached
14. We were not notified that our request had been denied until the Governor made that statement at a press conference in May.

15. We were not able to collect nomination petitions for our candidates for President and Vice President until their selection at the National Convention on May 23-24.
16. In recent weeks, we have had persons going door to door to collect petitions. However, they have reported back that their efforts have been largely unsuccessful because most people are unwilling to talk to them or exchange papers because of social distancing and infection concerns.
17. On the weekend of July 4th, we were able to get the consent of a retailer, the Market Basket, to use a table outside of its premises in Bedford.
18. We were able to secure 421 petitions as a result of the use of that table.
19. The total number of petitions we have secured as of July 7, 2020 for our state candidates is 803 and for our federal candidates 426.
20. Additional signatures have been collected but not verified.
21. I have been arranging "pick up days" in which people print out petitions from our website, sign them and I pick them up from their houses.
22. We have continued our petitioning efforts since then so our total on hand petitions are constantly being updated. I need to wait 24 hours from receiving the petitions before touching and removing invalid petitions (missing names, addresses, towns).


Jilletha Jarvis

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 13th day of July,
2020, by Jillette Jarvis.


Justice of the Peace/Notary Public

Arlene C. Weinstein, Notary Public
My Commission Expires May 20, 2025

From: Brian Shields
To: secretary@lpmh.org
Subject: Fwd: LPNH Petition Drive
Date: Wednesday, July 8, 2020 7:30:13 PM
Attachments: [LPNH Petition Drive Letter to Sec Gardner.pdf](#)
[Untitled attachment 08791.html](#)

Brian Shields

Begin forwarded message:

From: Brian Shields <brianshields@lpmh.org>
Date: April 1, 2020 at 5:06:30 PM EDT
To: elections@sos.state.nh.us
Cc: info@lpmh.org, Daniel Fishman <dan.fishman@lphq.org>
Subject: LPNH Petition Drive

Good evening,

Attached is a letter to Secretary Gardner from the Libertarian Party of New Hampshire Executive Committee concerning our ballot access petitioning during this COVID-19 emergency. It is time sensitive and your expediency in this matter is appreciated.

In Liberty,

Brian Shields
Chair
Libertarian Party of New Hampshire
Chair@LPNH.org



Libertarian Party of New Hampshire

Info@LPNH.org - (888) 688-LPNH

Secretary Gardner,

The Libertarian Party of New Hampshire has been petitioning throughout the state since the beginning of January to collect the signatures required to be placed on the 2020 November general election ballot. Our petition effort has been cut short due to the unprecedented State of Emergency declared by President Trump and Governor Sununu.

On Monday, March 16, 2020, LPNH concluded the risk of spreading the COVID19 virus throughout New Hampshire in our efforts to collect petitions became too high, and the Libertarian Party of New Hampshire halted ballot access efforts effective immediately to protect voters, activists, and those who will eventually handle these petitions in municipal offices throughout the state. Without the opportunity to collect signatures, there is not a path to allow any petition-eligible candidates to become qualified to be on the ballot.

We are asking you to make an extraordinary decision in this unprecedented time to protect the democratic process and allow New Hampshire voters the choice they would have had if our petition efforts were able to continue.

We are asking you in your authority as Secretary of State to restore our ballot access conditions of the 2018 election cycle, such that all candidates who are now required to achieve ballot access through petitioning under RSA 655:40-45 be allowed the same access as a qualified candidate of a recognized party by paying the filing fee and filing a declaration of candidacy during the filing period. If you are unable to grant such a request, we ask you to express our concerns to Governor Sununu and the legislature to create a safe and healthy path towards ballot access during this State of Emergency.

In Liberty,

DocuSigned by:
A handwritten signature in black ink, appearing to read "Brian Shields".
C3EDCF9C3CBE498...

Brian Shields

Chair - Libertarian Party of New Hampshire

Chair@LPNH.org



Libertarian Party of New Hampshire

Info@LPNH.org - (888) 688-LPNH

The LPNH Executive Committee

DocuSigned by:

Richard Manzo

AA1B026153F14AD...

Richard Manzo

Vice Chair

DocuSigned by:

Jillette Jarvis

31FC24032ACB434...

Jillette Jarvis

Secretary

DocuSigned by:

Robert Lombardo

658E13DE64F348D...

Robert Lombardo

Treasurer

DocuSigned by:

Jarec Rondeau

4217734C24EA437...

Jarec Rondeau

At-Large Member

DocuSigned by:

Tobin Menard

01A5BB657674CB...

Tobin Menard

At Large Member

Assistant Attorney General

New Hampshire Department of Justice

33 Capitol Street

Concord, NH 03301

Tel. (603) 271-3650

Fax (603) 271-2110

*****STATEMENT OF CONFIDENTIALITY*****

The information contained in this electronic message and any attachments to this message may contain confidential or privileged information, and is intended for the exclusive viewing of the addressee(s). If you are not the intended recipient, be aware that the retention, dissemination, distribution, disclosure, or copying of this transmission is prohibited. If you are neither the intended recipient(s), nor a person responsible for the delivery of this communication to the intended recipient(s), you are hereby notified that any retention, dissemination, distribution or copying of this communication is strictly prohibited. Please notify the Attorney General's Office immediately at (603) 271-3671 or reply to justice@doj.nh.gov if you are not the intended recipient, and then immediately delete all copies of this message and any attachments.

From: Darryl Perry <darrylwperry@gmail.com>
Sent: Wednesday, April 22, 2020 2:38 PM
To: DOJ-Election Law <electionlaw@doj.nh.gov>
Subject: Opinion Request

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

To the Election Law Division of the Office of the Attorney General:

On April 1 the Executive Committee of the Libertarian Party of New Hampshire sent a letter to Secretary of State Bill Gardner (attached) requesting relief from petitioning laws this year due to the ongoing pandemic. On April 9, I in my capacity as the Libertarian nominee for Governor, sent a Petition for Redress (attached) to Governor Sununu.

Thus far neither the Governor nor the Secretary of State have responded to either request.

The Attorney General recently worked with the SOS in issuing guidance to expand Absentee Voting in the upcoming elections.

Without the opportunity to collect signatures, there is not a path to allow any petition-eligible candidates to become qualified to be on the ballot. Therefore, I'm asking the Attorney General to urge the Governor and Secretary of State to grant relief to candidates who are unable, due to social distancing guidelines, to safely and effectively gather petitions.

I am additionally asking for a formal opinion on this matter be issued before the candidate filing period opens on June 3.

Sincerely,

Darryl W. Perry

A PETITION FOR REDRESS

WHEREAS the U.S. District Court in New Hampshire has recognized “under New Hampshire law, individuals have an explicit constitutional right to run for public office.” *Libertarian Party of New Hampshire, et al. v. William M. Gardner* (D.NH 2010); AND

WHEREAS Part 1 Article 11 says that “[e]very inhabitant in the state, having the proper qualifications, has an equal right to be elected into office.”; AND

WHEREAS Part 1 Article 4 says that “some [natural rights] are, in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience.”; AND

WHEREAS Part 1 Article 2 says that “Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin”; AND

WHEREAS a political philosophy fits within the Merriam-Webster Dictionary definition of creed; AND

WHEREAS Part 1 Article 8 says that “All power resid[es] originally in, and [is] derived from, the people”; AND

WHEREAS Part 1 Article 10 states “Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men”; AND

WHEREAS candidates for political office who are not members of a recognized political party (see RSA 655:17-a “nonparty or other candidates”) have an unequal process for being placed on the ballot (see RSA 655:19-c; RSA 655:40; 41; 42; 43); AND

WHEREAS these laws create two distinct classes of political candidates; AND

WHEREAS on January 11, 2020 the Libertarian Party nominated candidates for public office except for President; AND

WHEREAS the Libertarian Party’s nominees began circulating nomination papers in January; AND

WHEREAS on February 27, 2020, the Centers for Disease Control issued guidance recommending, among other things, that members of the public practice “social distancing” and minimize close contact with others in order to slow the spread of COVID-19; AND

WHEREAS, on or about March 11, 2020 the World Health Organization declared COVID-19 a pandemic; AND

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency (retroactive to March 1, 2020) under the federal Stafford Act due to the spread of COVID-19; AND

WHEREAS on March 13, 2020 Governor Chris Sununu declared a State of Emergency due to Novel Coronavirus (COVID-19); AND

WHEREAS on March 16, 2020 Governor Chris Sununu issued Emergency Order #2 which restricted gatherings of 50 or more attendees; AND

WHEREAS on March 23, 2020 Governor Chris Sununu issued Emergency Order #16 which restricted gatherings of 10 or more attendees; AND

WHEREAS on March 23, 2020 the CDC issued interim guidance which included information on social distancing; AND

WHEREAS the CDC says “Social distancing is the practice of increasing the space between individuals and decreasing the frequency of contact to reduce the risk of spreading a disease (ideally to maintain at least 6 feet between all individuals, even those who are asymptomatic).”; AND

WHEREAS on March 23, 2020 Governor Chris Sununu issued Emergency Order #12 permitting state and local government bodies to conduct meetings through electronic means; AND

WHEREAS on March 26, 2020 Governor Chris Sununu issued Emergency Order #17 “Closure of on-essential businesses and requiring Granite Staters to stay at home” until at least May 4, 2020; AND

WHEREAS on March 27, 2020 Governor Chris Sununu issued Emergency Order #18 which authorized the Director of the Division Motor Vehicles to take measures to reduce in-person contact, including on-line transactions and remote services; AND

WHEREAS on April 1, 2020 Governor Chris Sununu issued Emergency Order #23 which relieved certain municipal and local governmental bodies from meet on a particular schedule or a certain number of times within a given time frame; AND

WHEREAS on April 1, 2020 Governor Chris Sununu issued Emergency Order #23 which relieved certain municipal and local governmental bodies from complying with statutory or local deadlines or deadlines set forth in a municipal charter for taking actions on applications and requests; AND

WHEREAS on April 1, 2020 Governor Chris Sununu issued Emergency Order #23 which authorized municipal and local governmental bodies to transition to phone, online, and limited appointment-only services to allow for proper social distancing as defined by the Center for Disease Control; AND

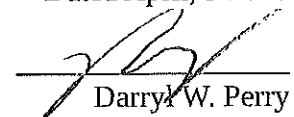
WHEREAS a candidate from a recognized political party filing in accordance with RSA 655:19-a would need to only pay a filing fee; AND

WHEREAS nonparty or other candidates filing in accordance with RSA 655:17-a must also comply with RSA 655:42 and pay a filing fee AND collect petitions; AND
WHEREAS other states have eased or eliminated petitioning requirements due to the ongoing pandemic; AND
WHEREAS at least two Secretaries of State have publicly asked their legislature to waive most petitioning requirements for the 2020 election; AND
WHEREAS Part 1 Article 32 states "The People have a right, in an orderly and peaceable manner, to assemble and consult upon the common good, give instructions to their Representatives, and to request of the legislative body, by way of petition or remonstrance, redress of the wrongs done them, and of the grievances they suffer."; AND
WHEREAS the New Hampshire General Court has suspended all activities until May 4, 2020; AND
WHEREAS on January 30, 2013 House Speaker Terie Norelli ruled that a motion by Rep. George Lambert to refer a citizen petition to a committee was out of order; AND
WHEREAS the deadline for introducing new legislation has passed; AND
WHEREAS the House and Senate deadline for legislative action on bills from the other chamber is May 14, 2020; AND
WHEREAS the candidate filing period is June 3 through June 12; AND
WHEREAS a legislative solution before the candidate filing period is thus extremely unlikely; AND
WHEREAS nomination papers for nonparty or other candidates are to be delivered to City and Town Clerks by August 5; AND
WHEREAS collecting the requisite number of valid petitions requires interacting with tens of thousands of people; AND
WHEREAS the Libertarian Party will nominate its Presidential candidate over Memorial Day weekend; AND
WHEREAS there is no known timeline for an end to the ongoing pandemic; AND
WHEREAS a report from the Institute for Health Metrics and Evaluation estimates that by early August 337 New Hampshire residents will have died from the pandemic; AND
WHEREAS nonparty and independent candidates may not begin circulating petitions before January 1st of the election year; AND
WHEREAS it is unsafe to circulate and collect petitions during a pandemic; AND
WHEREAS it is not possible to circulate and collect petitions while also practicing safe social distancing; AND
WHEREAS even if it were legal and/or physically feasible to gather signatures during the current public health emergency, it is unlikely that petition-circulators would be able to gather signatures because there are fewer people congregating in public places and fewer people are likely to open their doors to strangers who come knocking; AND
WHEREAS even after the public-health emergency subsides, the COVID-19 outbreak is likely to have a negative effect on signature gathering for a substantial period of time; AND
WHEREAS this effectively created a truncated petitioning window; AND
WHEREAS there are several federal court decisions declaring that when a petitioning window is truncated, the burdens placed upon candidates should be reduced; AND
WHEREAS the US Supreme Court ruled "[a] burden that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices protected by the First Amendment." *Anderson v. Celebrezze*, 460 U.S. 780 (1983)
WHEREAS in accordance with RSA 4:45, III and pursuant to Section 18 of Executive Order 2020-04, the Governor has the authority to promote and secure the safety and protection of the people of New Hampshire.

THEREFORE, I request the following relief:

- A declaration that nonparty or other candidates need only comply with RSA 655:19-c in order to be placed on the general election ballot.
- A declaration that any political organization that has placed a candidate on the general election ballot in one of the last 2 state election cycles be permitted to place their candidates on the ballot, provided the organization otherwise comply with RSA 655:43, II-IV.
- Such other and further relief as may be just and proper.

Dated April, 9 2020


Darryl W. Perry
Libertarian Party nominee for Governor

Stacey Hoyt

From: Jon Meyer
Sent: Tuesday, July 07, 2020 3:57 PM
To: Stacey Hoyt
Subject: FW: Opinion Request
Attachments: LPNH-Petition-Drive-Letter-to-Sec-Gardner(1).pdf; petition for redress.pdf

Please download

Jon Meyer

Backus Meyer & Branch, LLP
P.O. Box 516
116 Lowell Street
Manchester, NH 03105
(603) 668-7272
(603) 668-0730 (FAX)
(888) 259-7272
jmeyer@backusmeyer.com

From: Darryl Perry [mailto:darrylwperry@gmail.com]
Sent: Tuesday, July 07, 2020 3:48 PM
To: Jon Meyer <jmeyer@backusmeyer.com>
Subject: Fwd: Opinion Request

----- Forwarded message -----

From: **ChongYen, Nicholas** <Nicholas.ChongYen@doj.nh.gov>
Date: Mon, Apr 27, 2020 at 3:38 PM
Subject: RE: Opinion Request
To: Darryl Perry <darrylwperry@gmail.com>
Cc: Perlow, Jill <Jill.Perlow@doj.nh.gov>, Tekin, Jill <Jill.Tekin@doj.nh.gov>, Tracy, Richard <Richard.Tracy@doj.nh.gov>

Good afternoon Mr. Perry,

The Department of Justice does not have the statutory authority to modify or compel the Secretary of State or Governor to change the nomination and petitioning requirements.

Thank you,

Nicholas Chong Yen

From: Jillette Jarvis For Governor
To: info@jnh.org
Subject: Re:
Date: Thursday, April 30, 2020 4:24:30 PM

See below

Jillette

> On Apr 30, 2020, at 4:17 PM, Jillette Jarvis For Governor <jarvis-jillette@comcast.net> wrote:
>
> Mr. Formello;
>
> The Libertarian Party of N.H. would like to formally request the an Executive Order be granted for this election period to set the petitioning requirement for candidates to be on the ballot to the requirements set in the 2016 election. This is due to the Stay at Home order which halted our candidates' ability to petition for signatures. We voluntarily complied with this order due to the health risk to our volunteers and the members of the community. However, the N.H. Constitution guarantees the right to run for office for all individuals of the state and we would like to enable our members to exercise their constitutional right.
> As a side note, we feel extending Constitutional rights at this time would help our Governor, who is frankly being attacked for Constitutional infringement. Perhaps this would help show how invested he is in guaranteeing the rights of the citizens of this state.

Our formal request is:

A declaration that nonparty or other candidates need only comply with RSA 655:19-c in order to be placed on the general election ballot.

- A declaration that any political organization that has placed a candidate on the general election ballot in one of the last 2 state election cycles be permitted to place their candidates on the ballot, provided the organization otherwise comply with RSA 655:43, II-IV.

- Such other and further relief as may be just and proper.

>

> I would be happy to discuss this with you further. My phone number is 603-275-5834.

>

> Jillette

From: Formella, John
To: Jillette
Subject: Read: Important Exec. Order Request
Date: Sunday, May 10, 2020 5:44:25 PM

Your message

To: Formella, John
Subject: Important Exec. Order Request
Sent: Thursday, April 30, 2020 9:43:05 PM (UTC-05:00) Eastern Time (US & Canada)
was read on Monday, May 4, 2020 6:39:43 PM (UTC-05:00) Eastern Time (US & Canada).